

SAR-ALAM INDAH SDN BHD

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v.

CHUA PENG HEE

HIGH COURT SABAH & SARAWAK, KUCHING
RHODZARIAH BUJANG JC
[ORIGINATING SUMMONS NO: 24-410-2009-II]
19 FEBRUARY 2010

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LABOUR LAW: *Dismissal - Forced resignation - Defendant's claim in Labour Court for two months pay and termination benefits - Jurisdiction - Whether Labour Court seized with jurisdiction to determine claims for wages - Labour Ordinance (Sarawak) (Cap 76), ss. 8A, 12*

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The defendant herein was employed as a technical assistant by the plaintiff company since 1 August 2003. He claimed to have been forcibly made to resign from his position after an incident which happened on 4 May 2009 where he said he was assaulted by two men at the instance of one Dato Lee Choon Chin who was the Chief Executive Officer (CEO) of Weida (M) Bhd, the parent company of the plaintiff. The defendant filed a claim in the Labour Court asking for two months pay in lieu of notice and termination benefits. The plaintiff raised a preliminary objection *ie*, the Labour Court had no jurisdiction to decide on the defendant's complaint. The Labour Court did not rule on this objection and the plaintiff was therefore moved to file this action for the determination of the question as to whether the Director of Labour had the jurisdiction under s. 8A of the Labour Ordinance (Sarawak) (Cap 76) to inquire into and decide the complaint of the defendant as it involved the issue of forced resignation and/or constructive dismissal.

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Held (dismissing plaintiff's application):

- (1) The present position under s. 8A of the Ordinance is that the Labour Court is now seized with the jurisdiction to conduct an inquiry or determine any claims for wages following a dismissal without notice. The dismissal without notice is wide enough to cover constructive dismissal or as in this case, that of forced resignation. It does not usurp the power of the Industrial Court because the jurisdiction of both the Labour Court, the Industrial Court and for that matter, the civil courts, in respect of these kinds of cases, were determined by the reliefs sought by the workers. (paras 9, 11 & 12)

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- A (2) A worker who had been dismissed without notice who does not want reinstatement but just his wages *in lieu* of the notice (as provided under s. 12 of the Ordinance *ie*, both contractual notice or statutory notice) and termination benefits, can with the current sub-s. 3 to s. 8A file his claim in the Labour Court. The Ordinance is a piece of social legislation and was legislated with the noble aim to “make better provision on the law relating to labour.” The Ordinance should therefore not constrict (but facilitate) the enforcement of the rights of both employee and employer in order to promote industrial harmony and safeguard the interests of both. It was surely not the intention of the law, with its present provisions, to leave an employee, such as the defendant in this case, to be without any remedy, when all that he wants the Labour Court to adjudicate was his claim for wages *in lieu* of two months notice and termination benefits (not reinstatement) for being allegedly forced to resign by his employer. Hence, the Labour Court was seized with the jurisdiction to look into the defendant’s claim. (para 13)

E **Case(s) referred to:**

Jaafar Jantan & Ors v. Golden Lady (M) Sdn Bhd & Anor [1997] 1 LNS 446 HC (**refd**)

Majohn Jiken v. Marup Quarry Sdn Bhd [2009] 1 LNS 1120 HC (**refd**)

Nylex (M) Sdn Bhd v. Alias Chek [1985] 1 CLJ 185; [1985] CLJ (Rep) 602 HC (**refd**)

F **Rajaretnam Palaniandy v. Amalgamated Properties & Industries** [1988] 1 LNS 22 SC (**refd**)

Shin Min Daily News (M) Sdn Bhd v. Tan Chong Hin [1989] 1 CLJ 982; [1989] 2 CLJ (Rep) 469 HC (**refd**)

G **Legislation referred to:**

Employment Act 1955, ss. 69(1), (3), 14(1)

Industrial Relations Act 1967, s. 20

Labour Ordinance (Cap 76) (Sarawak), ss. 8A, 12

For the plaintiff - Stanley Eddy; M/s Battenberg & Talma Advocates

H *For the defendant - In Person*

Reported by Suhainah Wahiduddin

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JUDGMENT

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Rhodzariah Bujang JC:

[1] The defendant in this case was employed as a Technical Assistant by the plaintiff company since 1 August 2003. He claimed to have been forcibly made to resign from his position after an incident which happened on 4 May 2009 where he said he was assaulted by two men at the instance of one Dato Lee Choon Chin who was the Chief Executive Officer (CEO) of Weida (M) Bhd, the parent company of the plaintiff.

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[2] Two days later, the defendant filed a claim in the Labour Court asking for two months pay *in lieu* of notice (RM4,420) and termination benefit of RM8,936.90. The alleged incident as described above was stated in the statement of claim filed with the Labour Court and in which he said he had no choice and was forced to hand in his resignation letter after the alleged assault.

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[3] At the start of the inquiry held by the Labour Court, the plaintiff's counsel, Mr. Stanley Eddy raised a preliminary objection ie, the Labour Court has no jurisdiction to decide on the defendant's complaint because the nature of that complaint does not fall under s. 8A of the Labour Ordinance (Cap 76) (Sarawak). The Labour Court did not rule on this objection and the plaintiff was therefore moved to file this action for the determination of the question which is framed as follows:

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Whether the Director of Labour has the jurisdiction under Section 8A of the Labour Ordinance (Cap 76) (Sarawak) to inquire into and decide the complaint of Chua Peng Hee (the Defendant herein) against Sar-Alam Indah Sdn Bhd (the Plaintiff herein) in Kes Saman Pengarah Tenaga Kerja No. KBR/31301/2009/0130 as it involves the issue of forced resignation and/or constructive dismissal.

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Section 8A of the Labour Ordinance provides as follows:

8A. Director's power to inquire into complaints

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- (1) The Director may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payment in cash due to such employee under:

- (a) any term of the contract of service between such employee and his employer;

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- A (b) any of the provisions of this Ordinance or any subsidiary legislation made thereunder; or
- (c) the provisions of the Wages Council Act 1947 or any order made thereunder;

B and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount of such sum of money.

C (2) The powers of the Director under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Chapter, any claim by:

- (a) an employee against any person liable under section 117C;
- D (b) a sub-contractor for labour against a contractor or sub-contractor, for any sum of money which the sub-contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or

- E (c) an employer against his employee in respect of indemnity due to such employer under subsection (1) of section 13;

and to make such consequential orders as may be necessary to give effect to his decision.

- F (3) In addition to the powers conferred by subsections (1) and (2), the Director may inquire into and confirm or set aside any decision made by an employer to dismiss without notice, or downgrade or impose any other lesser punishment made by an employer under subsection (1) of section 14 and the Director may make such consequential orders as may be necessary to
- G give effect to his decision.

[4] There are three provisios to this section and a sub-s. (4), also with a provisio but since they are quite irrelevant to this application I will not reproduce nor mention them in this judgment.

- H [5] In making his case against the director's power to adjudicate the defendant's claim, Mr Stanley Eddy for the plaintiff has referred me to three cases decided by the High Court in respect of the same matter, the third one being a decision of YA Datuk Linton Albert whilst the other two were decisions of the High Court in Malaya.
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These three cases are *Jaafar Jantan & Ors v. Golden Lady (M) Sdn Bhd & Anor* [1997] 1 LNS 446, *Shin Min Daily News (M) Sdn Bhd v. Tan Chong Hin* [1989] 1 CLJ 982; [1989] 2 CLJ (Rep) 469 and the unreported decision of YA Datuk Linton Albert of *Majohn ak Jiken v. Marup Quarry Sdn Bhd* [2009] 1 LNS 1120 (Civil Appeal No. 11-19-2008-I). All three cases made reference to and followed the decision of the High Court in *Nylex (M) Sdn Bhd v. Alias Chek* [1985] 1 CLJ 185; [1985] CLJ (Rep) 602 and that is where I should begin my discussion in this case.

[6] Harun Hashim J decided in *Nylex's* case the power of the Director General (including that of the Assistant Director of Labour) under s. 69 of the Employment Act, which is in pari materia with, but not exactly on all fours with s. 8A of the Ordinance, is limited to matters concerning wages only and that the Director General does not have the power to question the validity of the dismissal of an employee by his employer. This decision was affirmed by the Supreme Court in *Rajaretnam Palaniandy v. Amalgamated Properties & Industries* [1988] 1 LNS 22.

[7] Mindful of the endorsement of *Nylex's* case by the Supreme Court, I have approached the submission of Mr Stanley Eddy with some apprehension for I happened to hold a differing view on the interpretation of s. 8A. Then, delving into the cited decisions and the relevant provisions of the law further, I discovered that in actual fact the position of the law now is different from the time when *Nylex's* case was decided and that *Nylex's* case and therefore that of the Supreme Court in *Rajaretnam's* is no longer good law. My explanation for saying so is this.

[8] When *Nylex's* case was decided in 1985, s. 69(1), (2) and (3) provides as follows:

- (1) The Director General may inquire into and decide any dispute between an employee and his employer or between an employee and any person liable under this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder to pay any wages to such employee where such dispute arises out of any term in the contract of service between such employee and his employer or out of any of the provisions of this Act, or any regulations, order or other subsidiary legislation whatsoever made thereunder, and in

A pursuance of such decision may make an order in the prescribed form for the payment by either party of such sum of money as he deems just without limitation of the amount thereof.

B (2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by a sub-contractor for labour against a contractor or sub-contractor for any sum which the sub-contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor and to make such consequential orders as may be necessary to give effect to his decision.

C (3) In addition to the powers conferred by subsection (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer **to down-grade or suspend an employee under section 14** and the Director General may make such consequential orders as may be necessary to give effect to his decision. (emphasis added).

E Based on the aforesaid provisions, Harun Hashim J held that, firstly, the words “any dispute” in sub-s. (1) must be read conjunctively with the words “to pay any wages due”. This conclusion he reached from the considerations of sub-s. 1 and sub-s. 2. Now for the additional powers of the Director-General under sub-s. 3 (which made reference to s. 14 and provides the powers of an employer to dismiss his employer on grounds of misconduct) he highlighted the fact that it did not refer to dismissal without notice. This led His Lordship to remark that:

F If the legislature had intended to include disputes concerning dismissals, it need only say - any decision made by an employer under section 14.

G thereby, justifying his restrictive interpretation of the powers of the Director-General under s. 69(1) of the Employment Act.

H [9] However in 1989 and by Act 1024, that sub-s. 3 to s. 69 was amended to include ‘dismissal without notice’. That subsection now reads:

I (3) In addition to the powers conferred by subsections (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer

under section 14(1)

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and the Director General may make such consequential orders as may be necessary to give effect to his decision.

Note that there is now a specific reference to s. 14(1) of the Act which provides as follows:

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14. Termination of contract for special reasons.

(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry:

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(a) dismiss without notice the employee;

(b) downgrade the employee; or

(c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

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Now s. 8A of the Ordinance has incorporated this amendment when the Ordinance was amended by Act 1237 which took effect on 1 October 2005 but unlike the present s. 69(3) of the Employment Act, instead of just referring to “s. 14(1)” it repeats what is stated therein ie, the director’s power to “inquire any decision made by an employer to **dismiss without notice**, or downgrade or impose any lesser punishment made by an employer under sub-s. (1) to s. 14 ...” (emphasis added).

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[10] It is clear to me that the amendment to section 69(3) was done following the decision in *Nylex’s* case and when the law was amended to take cognizance of the reasoning made in *Nylex’s* case, both that case and *Rajaretnam’s* case are no longer good law to follow.

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[11] The present position under s. 8A of the Ordinance (or s. 69 of the Employment Act for that matter) is that the Labour Court is now seized with the jurisdiction to conduct an inquiry or determine any claims for wages following a dismissal without notice.

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Dismissal Without Notice

[12] Additionally, I also take the view that dismissal without notice is wide enough to cover constructive dismissal or as in this case, that of forced resignation. In doing so, the Labour Court is not, as

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A was previously stated in the decisions quoted to me, usurping the
power of the Industrial Court. Already, as I said earlier, sub-s. (3)
allows the Labour Court to inquire into dismissal without notice. It
does not usurp the power of the Industrial Court because the
jurisdiction of both the Labour Court, the Industrial Court and for
B that matter, the civil courts, in respect of these kinds of cases, are
determined by the reliefs sought by the workers.

[13] To invoke the jurisdiction of the Industrial Court, a worker
who had been dismissed must claim for reinstatement under s. 20
C of the Industrial Relations Act 1967. Even though, when making
the award, the Industrial Court can grant him damages or such
other reliefs it deemed ‘necessary or expedient’ for the purpose of
settling the trade dispute (see s. 30(6)) but reinstatement must be
the only relief he can pray for in order to have his case referred to
D the Industrial Court. However, a worker who had been dismissed
without notice who does not want reinstatement but just his wages
in lieu of the notice (as provided under s. 12 of the Ordinance ie
both contractual notice or statutory notice) and termination
benefits, can with the current sub-s. 3 to s. 8A (or s. 69 of the
E Employment Act for that matter) file his claim in the Labour
Court. If he does not want reinstatement and neither does he want
to confine his relief to wages *in lieu* of notice and termination
benefits but other damages for breach of contract over and above
that provided by s. 12, then the only court which can grant him
F such a relief is the civil court. To force a worker to plead for
reinstatement and bring his case to the Industrial Court when what
he genuinely seeks is just his wages *in lieu* of notice and termination
benefits after he has been forced to resign or has been
constructively dismissed, is unfair and draconian; bearing in mind
G that the Ordinance is a piece of social legislation and was legislated
with the noble aim to “make better provision in the law relating to
labour”. The Ordinance should therefore not constrict (but
facilitate) the enforcement of the rights of both employee and
employer in order to promote industrial harmony and safeguard the
H interests of both. It is surely not the intention of the law, with it’s
present provisions, to leave an employee, such as the defendant in
this case, to be without any remedy, when all that he wants the
Labour Court to adjudicate is his claim for wages *in lieu* of two
months notice and termination benefits (not reinstatement) for
I being allegedly forced to resign by his employer.

[14] For these reasons, I rule that the Labour Court is seized with the jurisdiction to look into the defendant's claim. I would therefore dismiss the plaintiff's application with costs of only RM500 since the defendant only attended the hearing but did not prepare any submission.

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